

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	In Chapter 7
)	Case No. 18 B 35437
STEVEN D. ZARLING,)	Honorable LaShonda A. Hunt
)	Motion Date: July 17, 2019
Debtor.)	Motion Time: 10:00 a.m.

NOTICE OF MOTION

TO: See Attached Service List

PLEASE TAKE NOTICE THAT on July 17, 2019, at the hour of 10:00 a.m., **an OBJECTION TO DEBTOR'S ASSERTION OF EXEMPTION** shall be heard before the Honorable LaShonda A. Hunt of the United States Bankruptcy Court for the Northern District of Illinois, Courtroom 719 at 219 South Dearborn, Chicago, Illinois. A copy of same is attached hereto and thereby served upon you. You may appear if you so see fit.

GOLAN CHRISTIE TAGLIA LLP

AFFIDAVIT OF SERVICE

I, Robert R. Benjamin, an attorney, certify that I caused the foregoing Notice of Motion and Objection to Debtor's Assertion of Exemption to be served upon the parties who receive notice via CM/ECF, by e-mail and first class mail postage prepaid sent from 70 W. Madison Street, Suite 1500, Chicago, IL 60602 on June 17, 2019.

/s/Robert R. Benjamin
Robert R. Benjamin

GOLAN CHRISTIE TAGLIA LLP
Attorneys for Movant
70 W. Madison Street, Suite 1500
Chicago, Illinois 60602
312-263-2300

SERVICE LIST

Richard J Mason
McGuire Woods LLP
77 West Wacker Drive
Suite 4100
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Via CM/ECF

Steven D. Zarling
c/o David M Siegel
David M. Siegel & Associates
790 Chaddick Drive
Wheeling, IL 60090
Via CM/ECF

PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541
Via CM/ECF

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TO: Steven D. Zarling
c/o David M Siegel
David M. Siegel & Associates
790 Chaddick Drive
Wheeling, IL 60090
Via CM/ECF

NOTICE OF OBJECTION TO DEBTOR'S ASSERTION OF EXEMPTION

PLEASE TAKE NOTICE THAT Richard Mason (the "Trustee"), not individually but as Chapter 7 Trustee of the Estate of Steven D. Zarling (the "Debtor"), by and through his putative attorneys, Robert R. Benjamin, Beverly A. Berneman and Anthony J. D'Agostino of GOLAN CHRISTIE TAGLIA LLP, filed an objection to Debtor's assertion of exemption. A copy of the objection is attached hereto.

In the event that you wish to object to the motion, you may do so by filing a written objection and request for hearing with the Court on or before July 12, 2019. The Court will then schedule a hearing on the motion and your objection thereto. Any objection should state briefly its grounds therefore.

Unless a written request for hearing is filed with the Court on or before July 12, 2019, an order may be entered on July 17, 2019 granting the objection to Debtor's assertion of exemption.

Dated: June 17, 2019

RICHARD MASON,

By: /s/ Robert R. Benjamin
One of his attorneys

Robert R. Benjamin (ARDC #0170429)
Beverly A. Berneman (ARDC # 6189418)
Anthony J. D'Agostino (ARDC # 6299589)
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and

RICHARD MASON,

By: /s/ Richard Mason, Trustee

Richard Mason
Chapter 7 Trustee of the Estate of Steven D. Zarling
Richard J. Mason PC
77 W. Wacker Drive
Chicago, Illinois 60601
P: 312-750-3527
rmason@mcguirewoods.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	In Chapter 7
)	Case No. 18 B 35437
STEVEN D. ZARLING,)	Honorable LaShonda A. Hunt
)	Motion Date: July 17, 2019
Debtor.)	Motion Time: 10:00 a.m.

OBJECTION TO DEBTOR’S ASSERTION OF EXEMPTION

Richard Mason (the “Trustee”), not individually but as Chapter 7 Trustee of the Estate of Steven D. Zarling (the “Debtor”), by and through his putative attorneys, Robert R. Benjamin, Beverly A. Berneman and Anthony J. D’Agostino of GOLAN CHRISTIE TAGLIA LLP¹, objects to the exemption claimed by Debtor on Amended Schedule C, pursuant to Rule 4003(b) of the Federal Rules of Bankruptcy Procedure, and in support thereof states as follows:

1. On December 26, 2018, Debtor filed a voluntary petition for relief under Chapter 7 of Title 11 of the Bankruptcy Code (“Petition”) as an individual. Trustee was appointed and immediately thereafter began his examination of Debtor’s assets and liabilities.

2. After Debtor’s initial Section 341 Meeting of Creditors (the “341 Meeting”) on January 29, 2019, Debtor filed amended bankruptcy schedules on February 6, 2019 disclosing a February 2018 workers’ compensation settlement in the amount of \$39,810.82 (the “Settlement Funds”). [Dkt. No. 12.]

3. The 341 Meeting has been continued from time to time to permit further study by the Trustee. [Dkt. Nos. 11, 16, 18.]

4. Debtor asserts an exemption as to the Settlement Funds pursuant to 820 ILCS 305/21 (the “Workers’ Compensation Act”). *Id.*

¹ A Motion to Retain Special Counsel on behalf of the Trustee was filed on June 17, 2019.

5. On February 6, 2019, Debtor also filed an Amended Statement of Financial Affairs and disclosed that the Settlement Funds were transferred to George Zarling, Debtor's brother, in February 2018. [Dkt. No. 13.]

6. Section 305/21 under the Workers' Compensation Act exempts proceeds provided that they "remain readily available as needed for support and maintenance which actually retain the quality of moneys... but funds which have been converted to permanent investment are not exempt." *In re Irwin*, 371 B.R. 344, 346 (Bankr. C.D. Ill. 2007) (Workers' compensation settlement funds used to pay off a lien on a vehicle no longer retained the 'quality of moneys').

7. "A debtor may trace the exemption from the exempt asset to the liquid form, but the concept of tracing is not limitless. So long as the debtor continues to hold and to use the funds for the support of the debtor and his family." *In re Lantz*, 451 B.R. 843, 846 (Bankr. N.D. Ill. 2011), *quoting Auto Owners Ins. v. Berkshire*, 225 Ill. App. 3d 695, 698 (2d Dist. 1992).

8. In this case, Debtor's transfer of the Settlement Funds to his brother altered the potentially exempt nature of the funds as they were no longer for Debtor to hold and use "for the support of the Debtor and his family." *Id.* Therefore, the funds have lost their exempt status.

9. Debtor can only claim those exemptions allowed by state law. The claimed objection as to the Settlement Funds transferred to Debtor's brother is improper, not supported by Illinois law and should be denied.

10. Further, Debtor's transfer of the Settlement Funds occurred between ninety (90) days and one (1) year before the date of the filing of the Petition and was made to an "insider" as defined by 11 U.S.C. § 101(31)(A)(i). 11 U.S.C. § 547(b)(4)(B).

WHEREFORE, Richard Mason, not individually but as Chapter 7 Trustee of the Estate of Steven D. Zarling, requests that Debtor's claimed exemption be disallowed.

Dated: June 17, 2019

RICHARD MASON,

By: /s/ Robert R. Benjamin
One of his attorneys

Robert R. Benjamin (ARDC #0170429)
Beverly A. Berneman (ARDC # 6189418)
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and

RICHARD MASON,

By: /s/ Richard Mason, Trustee

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Chapter 7 Trustee of the Estate of Steven D. Zarling
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